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GENERAL SERVICES ADMINISTRATION

48 CFR Part 552

[(Change 57); GSAR Case 2012-G503 Docket No. 2012-0018;

Sequence No. 1]

RIN 3090-AJ36

General Services Administration Acquisition Regulation;

(GSAR); Industrial Funding Fee (IFF) and Sales Reporting

AGENCIES: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to address the use of the Industrial Funding Fee (IFF) collected under the Multiple Award Schedules (MAS) Program. The rule reflects GSA's current use of the Industrial Funding Fee, which includes uses specified in the Acquisition Services Fund, and which extend beyond the purposes currently stated in the GSAR.

DATES: Effective: **[Insert date 30 days after date of publication in the FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, 202-357-9652, or via email at Dana.Munson@gsa.gov, for clarification of content. For information pertaining to status or

publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR case 2012-G503.

SUPPLEMENTARY INFORMATION:

A. Background

GSA published a proposed rule with a request for public comments in the Federal Register at 77 FR 76446 on December 28, 2012, to address use of revised GSAR clause 552.238-74 Industrial Funding Fee (IFF) under the Multiple Award Schedules (MAS) Program, and reinstatement with changes of the information collection requirement concerning OMB Control Number 3090-0121, Industrial Funding Fee (IFF) and Sales Reporting. One comment was received.

In response, GSA published a second Information Collection notice request for public comments in the Federal Register at 78 FR 27239, on May 9, 2013 in which the comment from the first notice was addressed and to receive additional comments on the collection. One comment pertaining to the rule was received and is addressed in the Discussion and Analysis section of this rule. Another comment was received pertaining to the collection and is addressed in the Paperwork Reduction Act section of this rule.

The proposed rule sought to amend the GSAR to update the text addressing GSAR part 552, Solicitation Provisions

and Contract Clauses at 552.238-74 Industrial Funding Fee (IFF) and Sales Reporting. This change will improve the Multiple Award Schedules (MAS) Program by facilitating transparency and open government, and more accurately define the current MAS Program operations while simultaneously complying with the recommendations of the GSA Office of Inspector General (OIG).

Currently, the language contained in the IFF Clause under GSAR 552.238-74(b)(2) states "... The IFF reimburses the Federal Supply Service for the costs of operating the Federal Supply Schedules Program and recoups its operating costs from ordering activities." The GSA OIG's AUDIT OF THE MULTIPLE AWARD SCHEDULE PROGRAM INDUSTRIAL FUNDING FEE (REPORT NUMBER A090256/Q/A/P12003), dated February 3, 2012 (the "OIG Report"), recommended that GSA further improve transparency in the MAS Program by informing MAS customers that the IFF may be used to fund other eligible GSA programs besides those that manage the MAS program. As a result of the OIG recommendation, GSA is amending the current language at GSAR clause 552.238-74 Industrial Funding Fee (IFF) and Sales Reporting to include the expanded role of net revenue generated by IFF payments.

In addition, the OIG Report cited the GSA Modernization Act (Pub. L. No. 109-313, 120 Stat. 1734 (2006), codified

in relevant part at 40 U.S.C. 321), as the authority under which net operating revenue generated by the IFF can be used for more than simple recoupment of costs to run the MAS Program.

The GSA Modernization Act combined the General Supply Fund and the Information Technology Fund which were formerly separate, into one fund, the Acquisition Services Fund.

40 U.S.C. 321, among other things, grants the GSA Administrator latitude in determining how to use net operating revenue from the MAS Program, including funding other Federal Acquisition Services (FAS) programs or funding initiatives benefitting other FAS programs. Essentially, use of MAS program revenue may extend beyond mere MAS Program cost recovery. In the past, GSA did not convey this information directly to MAS Program customers.

Additionally, GSA is making administrative changes by updating all references to "Federal Supply Service" or "FSS" in the IFF clause to reflect the current organizational name: "Federal Acquisition Services" or "FAS", as appropriate.

This final rule complies with the recommendations of the GSA OIG, and facilitates transparency and open government, as well as more accurately reflects the current

MAS Program relative to use of the IFF. This final rule is separate and apart from any agency action that may change or alter the IFF rate or fee structure.

II. Discussion and Analysis

As a result of the publication of the proposed rule, one public comment was received and is addressed in this rule. Another public comment was received pertaining to the information collection and is addressed directly in section V. Paperwork Reduction Act of this rule. GSA has reviewed the comments in the development of this final rule and offers the following responses:

Comment: The commenter expressed two concerns about the collection requirements of IFF reporting for Transportation Service Providers (TSPs). The commenter believes the scope of the information collection requirement is inadequately defined and measured. This comment is addressed in section V. Paperwork Reduction Act of this rule.

Additionally, the commenter expressed that the information sought by GSA is in excess of what is necessary for the Agency to run its Freight Transportation Management Program.

Response: The IFF represents a percentage of the total quarterly sales reported under the Multiple Award

Schedules FSS Program. The IFF reimburses FSS for the costs of operating the FSS Program and enables FSS to recoup its operating costs from ordering activities. Although the General Freight Traffic Management Program also makes reference to an "Industrial Funding Fee" in its Request for Offers, that IFF is separate and distinct from the Industrial Funding Fee referenced in this case, which only relates to GSA's Multiple Award Schedules Program. As the commenter correctly states, the IFF referenced under the General Freight Traffic Management Program does not apply to MAS, and thus this change is outside the scope of the General Freight Traffic Management Program.

Therefore, no changes were made to the final rule as a result of the comment received.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a

significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the final rule clarifies GSA's use of the IFF collected under the MAS Program, consistent with the GSA Modernization Act and the recommendation of the GSA OIG. This change will not only implement the OIG's recommendations but will also benefit the agencies, GSA, FAS, and the MAS Program by facilitating transparency, accountability, and clarity about the MAS policy and operational procedures. This rule does not require implementation of any new changes on the part of businesses, large or small doing business with GSA. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

V. Paperwork Reduction Act

Discussion and Analysis

One respondent submitted a comment on the second information collection notice. The analysis of the public comment is summarized as follows:

Comment: The commenter felt that the Agency's estimate did not accurately reflect the public burden experienced by Transportation Service Providers under the Freight Transportation Management Program. The IFF clause requires quarterly submission of the IFF. However, under the Standard Tender of Service governing Transportation Service Providers in the Freight Transportation Management Program, reports are due on a monthly basis. Thus, presenting a much greater IC burden than estimated in the notice.

Response: GSA does not agree with commenter's comment. The Paperwork Reduction Act (PRA) requires agencies to estimate the burden imposed on the public in complying with the collection. The estimated burden hours for this reporting requirement are consistent with previously approved estimates under this information collection. These proposed GSAR revisions merely update the clause to reflect how GSA may use the IFF to include the ability to fund other FAS programs and fund initiatives that benefit other FAS programs. This is only an administrative change, and does not represent a program change that affects the existing reporting requirement associated with this case. Additionally, the estimated

burden hours already take into consideration the varying amount of time it can take for different types of entities to comply with the clause each quarter. The estimate is meant to represent an approximate average across the entire MAS Program. The estimated number of respondents is consistent with previously updated information collections affecting all MAS Program contractors. Also, the number of contractors under the MAS Program changes constantly and therefore a rounded estimate is utilized for this purpose.

GSA does not concur with the commenter's suggested revision to current burden estimates, and as a result, no changes were made to the burden estimates.

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has cleared this information collection requirement under OMB Control Number 3090-0121, titled: Industrial Funding Fee and Sales Reporting.

Public reporting burden for this collection of information is estimated to average .0833 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

The annual reporting burden is estimated as follows:

Respondents: 19,000.

Responses per Respondent: 4.

Total Responses: 76,000.

Hours per Response: .0833.

Total Burden Hours: 6,330.80.

List of Subjects in 48 CFR Part 552

Government procurement.

Dated: March 20, 2014.

Jeffrey Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, GSA amends 48 CFR part 552 as set forth below:

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Amend section 552.238-74 by—

- a. Revising the heading and date of the clause;
- b. Removing from paragraph (a)(2) "within" and adding "Federal Acquisition Services (FAS) within" in its place;
- c. Removing from paragraph (a)(4) "Supply" and adding "Acquisition" in its place; and removing "FSS" and adding "FAS" in its place (twice);
- d. Removing from the introductory text of paragraph (b) and paragraph (b)(1) "FSS" and adding "FAS" in its place;
- e. Revising paragraph (b)(2); and
- f. Removing from paragraph (c) "FSS" and adding "FAS" in its place (twice).

The revised text reads as follows:

552.238-74 Industrial Funding Fee and Sales Reporting.

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MODIFICATIONS (FEDERAL SUPPLY SCHEDULE) [(INSERT 30 DAYS AFTER
DATE OF PUBLICATION IN THE FEDERAL REGISTER)]

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(b) * * *

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of GSA's FAS. GSA's FAS has the unilateral right to change the percentage at any time, but not more than once per year. FAS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FAS for the costs of operating the Federal Supply Schedules Program. FAS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FAS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FAS will post notice of the current IFF at <https://72a.gsa.gov/> or successor website as appropriate.

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[BILLING CODE 6820-61]

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